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Written statement* submitted by the International Career Support Association, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 August 2018]

* Issued as received, in the language(s) of submission only.

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Current Situation of Child Abduction in Japan

In March of this year, a five-year-old girl was murdered by her biological mother and stepfather. The real offenders of this murder are her mother and stepfather; however, the judges are as guilty as her mother and stepfather. If only they gave a ruling based on human rights consideration and granted her biological father periodical visitation rights as in Western countries, she might still be alive. However, this five-year-old girl could not see her biological father nor could she ask for help from anybody. As a result, her life ended abruptly. In this regards, it is no exaggeration to say that the judge, who did not grant visitation rights, took the little girl's life away.

Visitation after divorce between a parent, who has lost parental custody, and his or her child can be secured through the Japanese judicial system. Also, abduction of a child by a parent is prohibited by Japanese law.

Specifically, the Japanese government ratified the Convention on the Rights of the Child (CRC) in 1994. As far as the domestic law is concerned, the government reformed Article 766 of the Civil Law in 2011.

Article 9 Paragraph 1 of the CRC clearly stipulates that "States Parties shall ensure that a child shall not be separated from his or her parents against their will." Also Paragraph 3 of Article 9 stipulates, "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis."

After reform, Article 766 of the Civil Law stipulates that "visitation" has to be decided at the time of divorce based on "the best interest of the child." During consideration in the Diet in regards to reform, the Minister of Justice stated the reasons for the reform as follows: (1) In order not to foster complaints of falsified domestic violence, a protection order based on Domestic Violence (DV) Prevention Law should be carried out under appropriate procedure. (2) Abduction of a child can be considered as "child abuse" and the court order of parental custody should be ruled against the abducting parent. (3) Some consideration should be based on the "Friendly Parent Rule," where a parent, who suggests more visitation of a child to the other parent, is granted with parental custody. (4) The "Principle of Continuity" should not be considered in a case where a parent abducts a child hoping to get parental custody in favor of this principle. (5) The intention of the law is for the family courts to make every effort for a child to have direct contact with both parents as much as possible.

Obviously, the law is satisfactory. All judges have to do is to rule based on "the best interests of the child."

However, so far, judges in Japan have ignored these laws completely. Instead, they have been ruling based upon the "Principle of Continuity," which lacks any support of the law. The "Principle of Continuity" grants parental right to a parent who has the child at the time of the court ruling. The judges often give their rulings based on this principle and ignore any inconvenient facts. As such, in the Japanese judicial system, "ruling by the written law" does not exist. The following supports the above statement.

In March of this year, ambassadors from 26 European countries submitted letters of protest to the Japanese Ministry of Justice for not adhering to the CRC. However, Japanese courts, especially the Supreme Court of Japan, ignored the protests and kept following the precedent of continuity.

In regards to the point that judges do not follow Article 766 of the Civil Law, a Ministry of Internal Affairs and Communications (MIAC) bureaucrat testified at the Committee on Judicial Affairs of the Diet. According to his testimony, judges completely ignore Article 766 and adhere to the "Principle of Continuity." Even when the abandoned parent acquired parental rights based upon the "Friendly Parent Rule" in family courty, it was overturned by the Japanese Supreme Court. The reason for the overturn was based upon the "Principle of Continuity."

In the case of a Ministry of Finance bureaucrat, he was granted visitation rights of "more than twice a month, or 20 days a year." He divorced through mediation, and was only granted parental authority for the son not his two daughters. Even though half of his salary went to child support, his visitation rights were later reduced to a dinner once a month for a couple of hours. After his transfer to England, the visitation was changed to "a letter every two months." After the son entered junior high school, the bureaucrat's parental authority was further reduced and even visitation at the son's school was not allowed based on his ex-wife's complaint.

Who benefits from this? None other than the "divorce lawyers." Divorce lawyers instruct wives to "abduct any children," "complain to be victims of DV," and "never let any child see the husband." Judges easily grant wives supervisory rights and child support, and lawyers get a percentage of the settlement.

Why do judges ignore child abduction and separation from a parent? One of the biggest reasons is collusion between judges and lawyers.

After retirement, the judge, who ruled to deprive parental custody from the above-mentioned bureaucrat of MIAC, acquired employment with the law firm of the ex-wife's lawyer. He is a so-called "parachutist" (the long-held practice of hiring retired high-ranking bureaucrats into top management of semi-governmental corporations or private companies). Basically, judges get guaranteed employment in return for favorable rulings for divorce lawyers. Financial benefit is more important to those judges than the best interests of children.

Such collusion came to the surface in yet another case. In this case, a judge suggested a mediation plan to a father, who was separated from his child and could not see the child, saying "if you accept this plan, you will be able to see your child." The mediation plan stipulated visitation rights of twice a month; however, it had a proviso, "in case that the child has a fever of above 37 degree or if the child does not want to see you, the visitation will be denied." The father insisted to remove the proviso, but the judge insisted that there was no problem with the proviso. As a result, when a visitation date approached, the ex-wife cancelled the visitation citing the proviso. The father has not seen his child for the past ten years.

Meanwhile, it was later revealed that upon the request of the lawyer, the judge and ex-wife secretly contacted and the judge suggested the mediation plan. When the ex-wife demanded that her ex-husband should never see her child, the judge assured her that "adding a proviso would remove any possibility for your ex-husband to see your child." Upon the judge's assurance, the ex-wife agreed on the mediation plan. In other words, the judge was well aware that the proviso would remove all possibility for the father to see his child, yet tricked the father into agreeing on the mediation plan.

Japanese judges think nothing of behaving in such an inhumane way. The above case is not an isolated incident and many Japanese judges do similar things. Surprisingly, the majority of Japanese judges do not possess a law-abiding spirit nor consciousness of human rights.
Based on the above-mentioned facts, we sincerely request the United Nations Human Rights Council to make the following recommendations to the Japanese Government.

The Japanese Government should instruct the judges to make rulings based on the related laws of human rights on the children such as Article 9 of the CRC, and Article 766 of the Civil Law. Further, those judges who make rulings against these laws should be impeached by the legislature.

The Japanese Government should prohit judges to acquire employment at a law firm whose cases they have dealt with as a judge.

The Japanese Government should grasp the organized activity of the divorce lawyers and investigate where the money they made through unlawful business of divorce actually goes. Based on the investigation, the government should publicize the names of the lawyers, names of their law firms and the names of lawyers associations they belong to. The government should also submit formal demand for disciplinary measures against those lawyers.

The government should investigate the actual conditions of human rights violation by divorce lawyers and if necessary, those lawyers should be arrested and prosecuted.

The government should reform the Child Abuse Prevention Law and add the "child abduction and separation of a child from a parent," which violates Article 9 of the CRC, into the definition of child abuse.

The government should reform the law so that a protection order based upon the DV Prevention Law is carried out appropriately and the existence of domestic violence can be properly judged by the police and there is no room for falsified domestic violence.

Implement the Hague Convention and revise the related law to allow joint custody.